

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	05-CV-0329 GKF-SAJ
)	
TYSON FOODS, INC., <i>et al.</i>)	
)	
Defendants.)	
)	

**CARGILL TURKEY PRODUCTION, LLC’S SUPPLEMENTAL RESPONSES AND OBJECTIONS TO
PLAINTIFFS’ SEPTEMBER 13, 2007 SET OF INTERROGATORIES
TO ALL DEFENDANTS**

Pursuant to Fed. R. Civ. P. 26 and 33, Defendant Cargill Turkey Production, LLC (“CTP”) hereby provides the following supplemental responses and objections to Plaintiffs’ September 13, 2007 Set of Interrogatories to all Defendants.

General Objections

CTP objects generally to each of Plaintiffs’ Interrogatories and Requests for Production as overly broad and misleading to the extent that said Interrogatories and Requests (a) purport to define “Waters of the State” as encompassing waters outside the Illinois River Watershed; and (b) purport to define “poultry waste” as “any . . . waste associated with the confinement of poultry from a poultry growing or feeding operation.” CTP further objects to Plaintiffs’ use of the term “poultry waste” as argumentative, inasmuch as poultry material used as fertilizer is not “waste” but is in fact a useful and beneficial material.

CTP objects generally to each of Plaintiffs’ Interrogatories and Requests for Production to the extent they request information prior to 2002 on issues other than corporate knowledge regarding the alleged detrimental effects of land application of “poultry waste,” in conflict with

the Court's repeated rulings concerning the permitted five year temporal scope of Plaintiffs' discovery. (See, e.g., 10/24/07 Order at 7, 8: Dkt. No. 1336.)

CTP objects generally to each of Plaintiffs' Interrogatories as overly broad and unduly burdensome to the extent they seek data or information not maintained by CTP in the ordinary course of its business. Further, pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, CTP objects to each of Plaintiffs' Interrogatories as overly broad and unduly burdensome to the extent they demand that CTP calculate or compile data or information from documents for which the burden of ascertaining the answer would be substantially the same for Plaintiffs as it would be for CTP.

CTP objects generally to each of Plaintiffs' Interrogatories to the extent they seek information that is or may be more appropriately the subject of expert testimony and therefore exceeds the scope of expert discovery permitted by this Court's scheduling orders and by Fed. R. Civ. P. 26 (b)(4).

CTP objects generally to each of Plaintiffs' Requests for Documents as unduly burdensome to the extent they demand production of electronically stored information ("ESI") in native format without a showing that the method in which the ESI has been produced by CTP is not reasonably usable as required by Rule 34 of the Federal Rules of Civil Procedure. CTP has previously produced its email in .tiff format with fully searchable text files pursuant to agreement with Plaintiffs and have produced all other ESI in the same manner consistent with communications between Plaintiffs' counsel and counsel for CTP.

SUPPLEMENTAL RESPONSES TO INTERROGATORIES

Interrogatory No. 5: For each year since 1980 please state whether poultry waste generated at your own poultry growing / feeding operations and/or poultry growing / feeding operations under contract with you in the Illinois River Watershed has been transported out of the Illinois River Watershed, and, if so, the identity of each operation that generated the poultry waste, the amounts of poultry waste that were transported out, when the poultry waste was transported out, where the poultry waste was transported to, who transported the poultry waste out, who paid for the transport out, and how much the transport cost.

Response to No. 5:

CTP objects to this interrogatory on the ground that it requests information prior to 2002, in conflict with the Court's repeated rulings concerning the permitted temporal scope of Plaintiffs' discovery. (See, e.g., 10/24/07 Order at 7, 8: Dkt. No. 1336.) The request is therefore overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

CTP further objects to Plaintiffs' interrogatory on the ground that their definition of "poultry waste" is compound, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. CTP further objects to Plaintiffs' use of the term "poultry waste" as argumentative, inasmuch as poultry material used as fertilizer is not "waste" but is in fact a useful and beneficial material.

CTP further objects to this interrogatory on the ground that it is overly broad and unduly burdensome to the extent it seeks data or information not maintained by CTP in the ordinary course of its business or demands that CTP calculate or compile data or information from documents for which the burden of ascertaining the answer would be substantially the

same for Plaintiffs as it would be for CTP. Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, CTP specifies in its responses below the documents from which Plaintiffs can derive the answer to this interrogatory.

Subject to and without waiving these objections:

With regard to CTP's breeder farms in the IRW, almost all poultry litter generated at these operations has been transported outside of the IRW since approximately October 2005. The only information CTP has regarding the details of the transportation of litter prior to Spring 2007, when CTP began transporting litter through BMPs, Inc., is contained in the documents bates numbered CARTP095156-CARTP095208. Since Spring 2007, CTP has transported litter from its breeder farms outside the IRW as follows:

<u>Farm</u>	<u>Haul Date</u>	<u>Amount of Litter</u>	<u>Transportation Location</u>	<u>Transporter</u>
Breeder Farm	7/19/07 – 7/23/07	119.2	Spiro, OK	Two States Sod
Breeder Farm #3	8/1/07 – 8/2/07	213.9 tons	Spiro, OK	Two States Sod
Breeder Farm #4	9/13/07 – 9/19/07	232.2 tons	Spiro, OK	Two States Sod / Jim Bob Cross
Breeder Farm #5	6/28/07 – 6/29/07	247 tons	Spiro, OK	Two States Sod
Breeder Farm #6	10/18/07 – 10/19/07	56 tons	Spiro, OK	Two States Sod

CTP has no knowledge regarding the costs of transportation as the buyer of the litter made all arrangements and paid all costs related to the litter's transportation.

With regard to CTP's independent contract growers in the IRW, to the knowledge of CTP these growers work directly with BMPs, Inc. to arrange for the transportation of their litter. CTP refers Plaintiffs to the documents produced by BMPs, Inc. pursuant to subpoena for the details of any such transportation.

Interrogatory No. 6: For poultry waste generated at your own poultry growing / feeding operations and/or poultry growing / feeding operations under contract with you in the Illinois River Watershed since 1980 that has not been transported out of the Illinois River Watershed,

please state, broken down by year, how the poultry waste was disposed of (e.g., land application within the Illinois River Watershed, burning as fuel within the Illinois River Watershed, etc.) and the amount disposed of in each particular manner.

Response to No. 6:

CTP objects to this interrogatory on the ground that it requests information prior to 2002, in conflict with the Court's repeated rulings concerning the permitted temporal scope of Plaintiffs' discovery. (See, e.g., 10/24/07 Order at 7, 8: Dkt. No. 1336.) The request is therefore overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

CTP further objects to Plaintiffs' interrogatory on the ground that their definition of "poultry waste" is compound, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. CTP further objects to Plaintiffs' use of the term "poultry waste" as argumentative, inasmuch as poultry material used as fertilizer is not "waste" but is in fact a useful and beneficial material.

CTP further objects to this interrogatory on the ground that it is overly broad and unduly burdensome to the extent it seeks data or information not maintained by CTP in the ordinary course of its business or demands that CTP calculate or compile data or information from documents for which the burden of ascertaining the answer would be substantially the same for Plaintiffs as it would be for CTP. Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, CTP specifies in its responses below the documents from which Plaintiffs can derive the answer to this interrogatory.

Subject to and without waving these objections:

Prior to October 2005, the litter generated at CTP's breeder farms in the IRW was either land applied in a manner consistent with the state-approved Nutrient Management Plans produced as the documents bates numbered CARTP123734-CARTP123848, or it was sold as part of an in-kind transfer to the contractors who cleaned out CTP's poultry houses. CTP has no records regarding the in-kind transfers and, therefore, has no further information or knowledge regarding the amounts of litter removed and/or hauled by these contractors.

Since October 2005, almost all poultry litter generated at these operations has been transported outside of the IRW. The only information CTP has regarding the details of the transportation of litter prior to Spring 2007, when CTP began transporting litter through BMPs, Inc., is contained in the documents bates numbered CARTP095156-CARTP095208. In addition, since October 2005, small amounts of poultry material have been applied as fertilizer on CTP's operation sites in the Illinois River Watershed.

With regard to the operations of CTP's independent contract growers, to the knowledge of CTP its contract growers have used their litter pursuant to their Nutrient or Waste Managements Plans approved by the States of Arkansas or Oklahoma and in manners consistent with all applicable laws and regulations. CTP has no information regarding the amounts of litter used by its independent contract growers and directs Plaintiffs to the contract growers themselves for this information.

AS TO OBJECTIONS

May 13, 2008

**RHODES, HIERONYMUS, JONES, TUCKER & GABLE,
PLLC**

BY: 

JOHN H. TUCKER, OBA #9110
THERESA NOBLE HILL, OBA #19119
100 W. Fifth Street, Suite 400 (74103-4287)
P.O. Box 21100
Tulsa, Oklahoma 74121-1100
Telephone: 918/582-1173
Facsimile: 918/592-3390
and

FAEGRE & BENSON LLP
DELMAR R. EHRICH
BRUCE JONES
KRISANN C. KLEIBACKER LEE
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
Telephone: 612/766-7000
Facsimile: 612/766-1600

CERTIFICATE OF SERVICE

I certify that on the 13th day of May, 2008, I electronically transmitted the attached document to the following, via e-mail:

W. A. Drew Edmondson, Attorney General
Kelly Hunter Burch, Assistant Attorney General
J. Trevor Hammons, Assistant Attorney General
Robert D. Singletary
Daniel Lennington, Assistant Attorney General

drew_edmondson@oag.state.ok.us
kelly_burch@oag.state.ok.us
trevor_hammons@oag.state.ok.us
Robert_singletary@oag.state.ok.us
Daniel.lennington@oag.ok.gov

Melvin David Riggs
Richard T. Garren
Sharon K. Weaver
David P. Page
Riggs Abney Neal Turpen Orbison & Lewis

driggs@riggsabney.com
rgarren@riggsabney.com
sweaver@riggsabney.com
dpage@riggsabney.com

Robert Allen Nance

rnance@riggsabney.com

Dorothy Sharon Gentry
Riggs Abney

sgentry@riggsabney.com

Louis W. Bullock
Robert M. Blakemore
Miller Keffer & Bullock

lbullock@mkblaw.net
rblakemore@mkblaw.net

William H. Narwold
Elizabeth C. Ward
Frederick C. Baker
Lee M. Heath
Elizabeth Claire Xidis
Motley Rice

bnarwold@motleyrice.com
lward@motleyrice.com
fbaker@motleyrice.com
lheath@motleyrice.com
exidis@motleyrice.com

COUNSEL FOR PLAINTIFFS

Stephen L. Jantzen
Paula M. Buchwald
Ryan, Whaley & Coldiron, P.C.

sjantzen@ryanwhaley.com
pbuchwald@ryanwhaley.com

Mark D. Hopson
Jay Thomas Jorgensen
Timothy K. Webster
Gordon D. Todd
Sidley Austin LLP

mhopson@sidley.com
jjorgensen@sidley.com
twebster@sidley.com
gtodd@sidley.com

Michael R. Bond
Erin W. Thompson
LLP

michael.bond@kutakrock.com
erin.thompson@kutakrock.com Kutack Rock

**COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.;
AND COBB-VANTRESS, INC.**

R. Thomas Lay
Kerr, Irvine, Rhodes & Ables

rtl@kiralaw.com

Jennifer S. Griffin
Lathrop & Gage, L.C.

jgriffin@lathropgage.com

COUNSEL FOR WILLOW BROOK FOODS, INC.

Robert P. Redemann
Lawrence W. Zeringue
David C. Senger
Perrine, McGivern, Redemann, Reid, Berry & Taylor, PLLC

rredemann@pmrlaw.net
lzeringue@pmrlaw.net
dsenger@pmrlaw.net

Robert E. Sanders
E. Stephen Williams
Young Williams P.A.

rsanders@youngwilliams.com
steve.williams@youngwilliams.com

COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.

George W. Owens
Randall E. Rose
The Owens Law Firm, P.C.

gwo@owenslawfirmpc.com
rer@owenslawfirmpc.com

James M. Graves jgraves@bassettlawfirm.com
Gary V. Weeks
Paul E. Thompson, Jr.
Woody Bassett
Jennifer E. Lloyd jlloyd@bassettlawfirm.com

Bassett Law Firm
COUNSEL FOR GEORGE'S INC. AND GEORGE'S FARMS, INC.

John R. Elrod jelrod@cwlaw.com
Vicki Bronson vbronson@cwlaw.com
Bruce W. Freeman bfreeman@cwlaw.com
Conner & Winters, LLLP
COUNSEL FOR SIMMONS FOODS, INC.

A. Scott McDaniel smcdaniel@mhla-law.com
Nicole M. Longwell nlongwell@mhla-law.com
Philip D. Hixon phixon@mhla-law.com
Craig Mirkes cmirkes@mhla-law.com
McDaniel, Hixon, Longwell & Acord, PLLC
Sherry P. Bartley sbartley@mwsgw.com
Mitchell Williams Selig Gates & Woodyard
COUNSEL FOR PETERSON FARMS, INC.

Michael D. Graves mgraves@hallestill.com
Dale Kenyon Williams, Jr. kwilliams@hallestill.com
COUNSEL FOR CERTAIN POULTRY GROWERS

Mia Vahlberg mvahlberg@gablelaw.com
**COUNSEL FOR NATIONAL CHICKEN COUNCIL,
U.S. POULTRY & EGG ASSOCIATION AND NATIONAL
TURKEY FEDERATION**

Adam J. Siegel ajsiegel@hhlaw.com
James T. Banks jtbanks@hhlaw.com

John D. Russell jrussell@fellerssnider.com
ATTORNEYS FOR ARKANSAS FARM BUREAU FEDERATION

Barry G. Reynolds Reynolds@titushillis.com
**ATTORNEYS FOR AMERICAN FARM BUREAU FEDERATION
AND NATIONAL CATTLEMEN'S BEEF ASSOCIATION**

Jessica E. Rainey jrainey@titushillis.com
**ATTORNEYS FOR AMERICAN FARM BUREAU FEDERATION
AND NATIONAL CATTLEMEN'S BEEF ASSOCIATION**

M. Richard Mullins Richard.mullins@mcafeetaft.com
ATTORNEYS FOR TEXAS FARM BUREAU,

**TEXAS CATTLE FEEDERS ASSOCIATION,
TEXAS PORK PRODUCERS ASSOCIATION, AND
TEXAS ASSOCIATION OF DAIRYMEN**

William A. Waddell, Jr.

waddell@fec.net

I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

C. Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118
COUNSEL FOR PLAINTIFFS

Charles L. Moulton
Arkansas Natural Resources Commission
323 Center Street
Suite 200
Little Rock, AR 72206

A handwritten signature in black ink, appearing to read "Charles L. Moulton", is written over a horizontal line.